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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-308*

13 **ANTHONY JOHN RICH**  
14 **40502 Shellie Lane**  
**Hemet, CA 92544**

**A C C U S A T I O N**

15 **Registered Nurse License No. 766589**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about February 1, 2010, the Board of Registered Nursing issued Registered  
24 Nurse License Number 766589 to Anthony John Rich (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on September 30, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or  
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
following:

9 . . . .

10 (f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

12 . . . .

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

16 . . . .

17 (b) Use any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
19 dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,  
or self-administration of any of the substances described in subdivisions (a) and (b) of  
22 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
23 the conviction is conclusive evidence thereof.

24 . . . .

25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
27 made to a charge substantially related to the qualifications, functions and duties of a  
registered nurse is deemed to be a conviction within the meaning of this article. The  
28 board may order the license or certificate suspended or revoked, or may decline to  
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

#### REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 COSTS

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (March 23, 2011 Criminal Conviction for DUI on December 12, 2010)

8 15. Respondent has subjected his registered nurse license to disciplinary action under  
9 sections 490 and 2761, subdivision (f) of the Code in that he was convicted of a crime that is  
10 substantially related to the qualifications, functions, and duties of a registered nurse. The  
11 circumstances are as follows:

12 a. On or about March 23, 2011, in a criminal proceeding entitled *People of the*  
13 *State of California v. Anthony John Rich*, in Riverside County Superior Court, case number  
14 SWM1100261, Respondent was convicted on his plea of guilty of violating Vehicle Code section  
15 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a  
16 misdemeanor. The court dismissed a second count of violating Vehicle Code section 23152,  
17 subdivision (a), driving under the influence of alcohol, pursuant to a plea agreement. Respondent  
18 admitted and the court found true the enhancement that Respondent's BAC was .15 percent or  
19 more within the meaning of Vehicle Code section 23578, and that Respondent was previously  
20 convicted of violating Vehicle Code section 23103.5, alcohol-related reckless driving. (See  
21 paragraph 18, below.)

22 b. As a result of the convictions, on or about March 23, 2011, Respondent was  
23 granted 48 months summary probation, and ordered to serve 30 days in the Work Release  
24 Program with credit for two days. Respondent was further ordered to complete an 18-month  
25 Drinking Driver Program, pay fees, fines, and restitution in the amount of \$2,534.45, and comply  
26 with the terms of standard DUI probation. Respondent's probation was revoked and reinstated on  
27 June 21, 2011, after he was convicted for driving on a suspended license.

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1 c. The facts that led to the conviction are that on or about two-thirty in the  
2 morning on December 12, 2010, a patrol officer with the California Highway Patrol (CHP) was  
3 dispatched to assist with the investigation of a possible DUI driver passed out in the drive-thru of  
4 a fast food restaurant. Upon arrival, the CHP Officer met with a Riverside County Sheriff's  
5 Deputy. Upon contact with Respondent, the CHP officer immediately detected the odor of an  
6 alcoholic beverage coming from Respondent, his eyes were red and watery, he walked with an  
7 unsteady gait, and his speech was slurred. Respondent's nose was bloody; he said it was from  
8 passing out and hitting his face on the steering wheel. Respondent admitted to consuming beer  
9 earlier in the evening. Respondent was unable to perform a series of field sobriety tests as  
10 explained and demonstrated by the officer. Respondent was arrested for driving under the  
11 influence of alcohol. During booking, Respondent provided two breath samples which were both  
12 analyzed with a BAC of .22 percent.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Use of Alcohol in a Dangerous Manner)**

15 16. Respondent has subjected his registered nurse license to disciplinary action under  
16 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about  
17 December 12, 2010, as described in paragraph 15, above, Respondent used alcoholic beverages to  
18 an extent or in a manner that was dangerous and injurious to himself, and potentially dangerous to  
19 others in that he operated a motor vehicle with a significantly high BAC.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Conviction of an Alcohol-Related Criminal Offense)**

22 17. Respondent has subjected his registered nurse license to disciplinary action under  
23 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about March  
24 23, 2011, as described in paragraph 15, above, Respondent was convicted of a criminal offense  
25 involving the consumption of alcohol.

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1 **DISCIPLINARY CONSIDERATIONS**

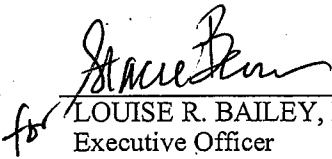
2 18. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
3 to California Code of Regulations, title 16, section 1445, subdivision (b), Complainant alleges  
4 that on or about April 30, 2008, in a prior criminal proceeding entitled *People of the State of*  
5 *California v. Anthony John Rich*, in Riverside County Superior Court, case number SWM073421,  
6 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23103.5,  
7 alcohol-related reckless driving, a misdemeanor. As a result of the conviction, Respondent was  
8 granted 36 months summary probation, and sentenced to one day in jail, with credit for one day.  
9 Respondent was further ordered to complete a four-month First Offender DUI Program, pay fees,  
10 fines, and restitution, and comply with DUI probation terms.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Board of Registered Nursing issue a decision:

- 14 1. Revoking or suspending Registered Nurse License Number 766589, issued to  
15 Anthony John Rich;  
16 2. Ordering Anthony John Rich to pay the Board of Registered Nursing the reasonable  
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
18 Code section 125.3;  
19 3. Taking such other and further action as deemed necessary and proper.  
20  
21

22 DATED: OCTOBER 24, 2012

23    
24 LOUISE R. BAILEY, M.ED., RN  
25 Executive Officer  
26 Board of Registered Nursing  
27 Department of Consumer Affairs  
28 State of California  
Complainant

SD2012703979